

Before the  
Federal Communications Commission  
Washington, D.C. 20554

|                                     |   |                   |
|-------------------------------------|---|-------------------|
| In the Matter of                    | ) |                   |
|                                     | ) |                   |
| Federal-State Joint Board on        | ) | CC Docket No. 96- |
| 45                                  |   |                   |
| Universal Service                   | ) |                   |
|                                     | ) |                   |
| High-Cost Universal Service Support | ) | WC Docket No.     |
| 05-337                              |   |                   |

COMMENTS OF THE  
WYOMING PUBLIC SERVICE COMMISSION

Filed March 27, 2006

Wyoming Public Service Commission  
Hansen Building, Suite 300  
2515 Warren Avenue  
Cheyenne, Wyoming 82002

307.777.7427

On December 9, 2005, the Federal Communications Commission (Commission) adopted a Notice of Proposed Rulemaking (Notice) requesting comments on various statutory terms and issues associated with section 254 of the federal Telecommunications Act of 1996 (Act). The Notice also requested comments on the United States Court of Appeals for the Tenth Circuit's (Tenth Circuit) decision in *Qwest Corp. v FCC (Qwest II)*.<sup>1</sup> Through an Order adopted by the Commission on January 26, 2006, the comment date and reply comment date were established to be March 27, 2006, and May 26, 2006, respectively. This Order modified the comment and reply comment dates originally established by the Commission for this proceeding. With Wyoming's incumbent non-rural carrier, Qwest Corporation, serving approximately 83 percent (83%) of the state's access lines including tens of thousands of rural access lines, the Wyoming Public Service Commission (WPSC) respectfully submits these comments in response to the Notice.

In general, section 254 of the Act requires the Commission to implement specific, predictable and sufficient support mechanisms which preserve and advance universal service and which provide for rates in rural, high-cost areas that are comparable to rates charged in urban areas. In addition, section 254 requires this federal support be explicit and sufficient to achieve the universal service goals of the Act. The WPSC has been an active and vocal participant in numerous proceedings

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<sup>1</sup> *Federal-State Joint Board on Universal Service, High-Cost Universal Service Support*, CC Docket No. 96-45, WC Docket No. 05-337, Notice of Proposed Rulemaking, (released December 9, 2005); 47U.S.C. § 254(b); *Qwest Corp. v. FCC*, 398 F3d 1222 (10<sup>th</sup> Circuit 2005).

at the Commission dealing with federal universal service issues relating to non-rural carriers. *See*, Reply Comments of the Wyoming Public Service Comments, CC Docket No. 96-45, in response to the Commission's Notice of Proposed Rulemaking from the Ninth Report and Order (April 25, 2002). *Also see*, Comments of the Wyoming Public Service Commission on the Joint Board Recommended Decision, CC Docket No. 96-45 (December 20, 2002). *Finally, see*, Wyoming Public Service Commission Petition for Reconsideration of the Ninth Report and Order and Eighteenth Order on Reconsideration, CC Docket No. 96-45 (December 30, 1999). The WPSC was an active member of the Rural Task Force created to address universal service issues. The WPSC was an Intervenor-Petitioner in the *Qwest II* case before the Tenth Circuit and filed a brief supporting the Petition for Review. Many of the positions, issues and concerns raised by the WPSC over the years have been affirmed and/or recognized by the findings and conclusions found in the *Qwest II* decision.

As the Tenth Circuit Court found in *Qwest II*, the Commission's determinations on "reasonable comparability" were not based on any direct relationship which currently exists between rates and costs for the vast majority of carriers and customers. This is due to the fact, recognized several times by the Commission, that, unlike most states, Wyoming has implemented comprehensive competitive policy reforms, re-balanced rates, established cost-based rates for all telecommunications services, eliminated implicit subsidies and implemented an

explicit state universal service support mechanism. The findings in *Qwest II* associated with “reasonable comparability” are in general agreement with the comments and petitions filed over the years by the WPSC in numerous proceedings. Local rates for non-rural carriers which are not truly cost-based do not provide for an effective or conclusive comparison. When a comparison is done attempting to establish some level of reasonableness within the context of the 1996 Act, it should not be a comparison of rural and urban rates within each state. The comparison should be of rural rates to a properly determined urban rate benchmark. To pursue this rate comparison, the Commission, possibly in conjunction with the Universal Service Joint Board, should require the submission of applicable and relevant rate data from each state commission. The individual state commissions should be the best available source for this rate data and the WPSC is ready to provide this information for our non-rural carrier, Qwest.

To achieve a truly sufficient standard required by the statutory principles contained in section 254(b)(3) of the Act, the non-rural high-cost support mechanism needs to be revised so that carriers serving exchanges with similar cost characteristics are treated comparably for federal universal support consideration. Carriers serving these exchanges are virtually identical in all respects except for a federally-mandated classification (rural versus non-rural) and should be treated the same. Such is the case in Wyoming. Qwest’s exchanges in Wyoming are “non-rural” by definition only, while in reality they are equally rural in nature to those

served by “rural” carriers. Many of Qwest’s exchanges in Wyoming are functionally and operationally similar to the adjacent rural exchanges of other rural carriers. Qwest, with its local exchange costs and operations equal to that of a rural carrier, should be eligible to receive high-cost support in the same manner as the rural carrier. This principle would provide the necessary incentives, rather than the disincentives which exist today, for Qwest and other similarly situated non-rural carriers to further de-average rates and make additional movement towards cost-based rates on a more granular level. The WPSC continues to promote and implement these policies at the state level.

Under Wyoming law, the WPSC granted the application of Silver Star Communications (Silver Star), a rural carrier in Wyoming, to have its local exchange services deemed competitive. Silver Star used this authority to enter the Afton exchange of Qwest to compete on a facilities basis with Qwest. Silver Star’s certificated area in Wyoming is adjacent to the Afton exchange. Qwest’s prices for all its Wyoming exchanges are deaveraged into a Base Rate Area and three zones on a statewide average basis with federal universal service support targeted to the high cost outlying zones. However, there is no deaveraging between high cost Qwest exchanges such as Afton with a total of 2,563 access lines and lower cost exchanges such as Cheyenne with 46,400 access lines. Silver Star receives approximately \$28.36 per month per access line in federal high-cost support for its Freedom, Wyoming exchange which has 2,468 access lines and is adjacent to the

Afton exchange of Qwest. The Freedom exchange has very similar cost characteristics to the Afton exchange for which Qwest receives approximately \$11.52 per month per access line in federal high-cost support. Now that Silver Star has entered the Afton exchange they too are subject to the lower “Qwest” level of support per access line when there is virtually no difference in the cost to serve a customer in the Freedom exchange and the cost to serve a customer in the Afton exchange. This is an absurd result. Qwest does not deaverage between lower cost exchanges (Cheyenne) and higher cost exchanges (Afton) because they do not receive, due to the current rules, differential federal support based on the differential in the cost to serve. Qwest receives less per line support to serve customers with relatively high cost characteristics than Silver Star does in a neighboring exchange. Now that Silver Star has entered the Afton exchange, they also receive less per line support in Afton than they do in Freedom. This federal universal service fund policy creates an unnecessary barrier to competitive entry in the rural, high-cost exchanges of Qwest in Wyoming.

The current high-cost support mechanism, as it is being applied to Qwest in Wyoming, is a deterrent and barrier to competitive entry into Wyoming’s rural exchanges. The Commission’s forward-looking cost model applied on a statewide study area basis is not an appropriate methodology to achieve the universal service mandates of section 254 of the Act. The Commission’s forward-looking cost model has long been criticized as failing to recognize and accurately incorporate the true

costs of providing service in rural, high-cost areas. The classification and treatment of Qwest as a non-rural carrier is a false label and has had detrimental effects on the universal service goals and competitive goals of the Act. The unequal treatment of carriers with essentially the same rural characteristics is contrary to the intent of the Act.

A rate-based universal service support mechanism would provide a better opportunity to achieve the statutory principles of section 254. Currently for too many states (particularly Wyoming) the cost-based support mechanism being utilized bears no direct relationship to the rates in place, especially the rates for rural, high-cost customers of non-rural carriers. Once the relevant rate data are gathered, most likely from state regulatory agencies, a rate-based support mechanism would be easier to implement and administer. The rate-based approach would more accurately and appropriately provide sufficient support to accomplish true rate comparability, as required by the Tenth Circuit.

As to the universal service aspects of the National Association of Regulatory Utility Commissioners (NARUC) Intercarrier Compensation Task Force Plan, the WPSC fully supports the universal service principles contained in the Plan. The first principle calls for technological neutrality in universal service funding and states the list of services designated for support should be determined through an ongoing process. The second principle states that support provided to high-cost



rural areas should not be based on whether that area is served by a “rural” or “non-rural” carrier. In other words, the correct comparison is between rural areas of rural carriers and the rural areas of non-rural carriers; and it is made on the facts. The real difference should be the areas served not the type of carrier serving the area. This principle mirrors the argument presented above for Wyoming.

## CONCLUSION

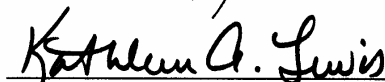
For the reasons stated above, the WPSC urges the Commission to treat the rural exchanges of Qwest as it treats the rural exchanges of other local service providers. The costs of rural exchangers differ substantially from the costs of truly non-rural exchanges. Artificial distinctions imposed on a carrier and its customers without regard for the reality of the situation imposes a stiff and unnecessary penalty on rural exchanges which have the misfortune to be served by a carrier which has been given the blanket and inaccurate title of “non-rural.” The courts and the Act support the WPSC position and we hope that the Commission will also support fair treatment for the described rural exchange customers.

Respectfully submitted,

PUBLIC SERVICE COMMISSION OF WYOMING



STEVE FURTNEY, Chairman



KATHLEEN A. LEWIS, Deputy Chair



MARY BYRNES, Commissioner